

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

RME Illinois, L.L.C.)	
Petition for Issuance of Certificate of Public)	Docket No. 08-0490
Convenience and Necessity to Provide Onsite)	
Wastewater, Collection and Dispersal Services)	
To a Parcel in Lake Villa, Lake County, Illinois)	
Pursuant to Section 8-406 of the Illinois Public)	
Utilities Act.)	(Cons.)
RME Illinois, L.L.C.)	
Petition for Issuance of Certificate of Public)	Docket No. 08-0491
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To a Parcel in Long Grove, Lake County, Illinois)	
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Utilities Act.)	

INITIAL BRIEF

OF RME ILLINOIS, L.L.C.

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RME Illinois, LLC (“RME” or the “Company”), hereby respectfully submits its Initial Brief in accordance with the schedule established by the Administrative Law Judge (“ALJ”) and, in support thereof, states as follows:

I. INTRODUCTION

RME has presented compelling evidence demonstrating that it has the managerial, technical and financial capability to serve parcels within the Villages of Lake Villa and Long Grove in Lake County, Illinois. RME’s proposal will promote the public convenience and is otherwise fully in accord with Section 8-406 of the Public Utilities Act (“Act”), 220 ILCS 5/8-406. Based upon the compelling evidence, it is proper for the Illinois Commerce Commission (“Commission”) to grant RME’s Petition for Certificate of Public Convenience and Necessity (“Certificate”).

II. DISCUSSION OF CASE

These Proceedings are pursuant to the Petition of RME Illinois, LLC (“RME”) seeking licensure as a public utility company to provide onsite wastewater services. The two consolidated dockets involved are Docket 08-0490, a 44-lot subdivision in Lake Villa, Lake County, Illinois known as Falcon Crest and Docket 08-0491 a 9-lot subdivision in Long Grove, Lake County, Illinois known as Eastgate Estates. There are no onsite wastewater public utility companies in Illinois. It has been recognized by the United States Environmental Protection Agency (“USEPA”) that a need exists for public utility companies to manage onsite wastewater services as described in USEPA’s authored “Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems”. (“Guidelines”) (Staff Ex. 1.0, Attachment 1.2)

The Executive Summary in the Guidelines states “...many of the systems in use are improperly managed and do not provide the level of treatment necessary to adequately protect public health and surface and ground water quality. (Id at 3) Proper management of decentralized systems involves implementation of a comprehensive, life-cycle series of elements and activities that address public education and participation, planning, performance, site evaluation, design, construction, operation and maintenance, residuals management, training and certification/licensing, inspections and monitoring, corrective actions recordkeeping/inventorying/reporting, and financial issues and funding.” (Id at 3) The above activities can only be accomplished through a public utility company using the Model 5 approach discussed in the Guidelines. (Id at 1-62) RME is prepared and qualified to take on the task of accomplishing these activities and to simultaneously promote public health and safety.

The just and reasonable refund methodology for providing private investment to create an onsite wastewater utility is an approved methodology. The methodology proposed by RME relies on developer initial investment with a refund of costs to the developer as customers attach to the wastewater system, the same methodology developed in Dockets 00-0194 and 01-0645 and utilized in many dockets thereafter.

The methodology proposed by Staff witness Thomas Q. Smith stipulates that RME be required to finance the entire wastewater backbone at its own cost without developer participation. Staff witness Smith stated that, in essence I am proposing refunds. (Staff Ex. 6.0 at 5) However, if the utility provides the entire investment in backbone plant then there will be nothing to refund to the developer. (Id at 5)

Each suggested methodology will be addressed by RME in light of being just and reasonable for the utility and its customers.

Once a reasonable investment methodology is ascertained, the remaining issues concerning financing, tariff rates, accounting for transactions, and capability of managing the systems can be resolved without contest. After a brief discussion of how the accepted investment methodology is applied to each of the contested issues, a short conclusion follows.

A. Background

On August 14, 2008, RME Illinois, L.L.C. ("RME" or the "Company") filed two separate Petitions seeking issuance by the Illinois Commerce Commission ("Commission") of Certificates of Public Convenience and Necessity ("Certificates") pursuant to Section 8-406 of the Public Utilities Act ("PUA") or ("Act"), (220 ILCS 5/8-406) Pursuant to proper legal notice, a pre-hearing conference was held on September 22, 2008 and several status hearings were held before a duly authorized Administrative Law Judge of the Commission at its offices in Chicago, Illinois. On October 1, 2008 the

two proceedings for Lake Villa and Long Grove were consolidated. An evidentiary hearing was held on March 24, 2009. Appearances were entered and testimony was presented by RME and Staff. At the conclusion of the hearing on March 24, 2009 the matter was marked Heard and Taken.

B. Legal Standards

Requests for Certificates of Public Convenience and Necessity are governed by Section 8-406 of the PUA, which provides, in part:

- (b) No public utility shall begin construction of any new plant, equipment, property or facility or any extension or alteration thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction. Whenever after a hearing the Commission determines that any new construction or the transaction of any business by a public utility will promote the public convenience and is necessary thereto, it shall have the power to issue certificates of public convenience and necessity. The Commission shall determine that proposed construction will promote the public convenience and necessity only if the utility demonstrates: (1) that the proposed construction is necessary to provide adequate, reliable, and efficient service to its customers and is the least-cost means of satisfying the service needs of its customers; (2) that the utility is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof; and (3) that the utility is capable of financing the proposed construction without any significant adverse financial consequences for the utility or its customers.*

Investment policy is governed by the application of 83 Ill. Adm. Code 600.370 part a) and part b) which state as follows:

The utility shall extend service to customers under the following terms and conditions:

- a) The utility will provide all supply plant (backbone plant) at its cost and expense without requiring contributions or tap-on-fees from customers, developers or promoters, except in those unusual cases where extensive plant additions are required before customers can be attached. In such instances the utility may require the customer, developer and/or promoter to advance funds, subject to refund as customers are attached, or require a revenue guarantee in lieu of customers being attached. Each contract for such an advance or revenue guarantee shall be filed with the Commission for approval.*
- b) Unless other terms and conditions are formally approved by the Commission, the utility shall extend its waster mains from the end of existing mains on the following terms and conditions:*
 - 1) Upon application being made for an extension of a water main, the utility shall determine the necessary size, location and characteristics of the main and of all valves, fittings and other appurtenances and shall make an estimate of the cost of the proposed extension, including*

pipes, valves, fittings, all other appurtenances and other materials and all other costs such as labor, permits, etc., including the utility's expense of supervision, engineering, insurance, tools and equipment, accounting and other overhead expenses. Extensions made under this Section shall be on the basis of a main size of eight (8) inches in diameter unless the requirement of the customer or customers to be served call for a larger main, in which case the cost shall be based on the larger main. In special cases, exceptions to the size of the main can be made by the utility to comply with good engineering principals.

- 2) If the estimated cost of the extension is not greater than one and one-half (1 ½) times the utility's estimate of annual revenue to be received from the customers who will immediately attach to the extension, the utility will finance and make the extension without the requirement of any payment.*
- 3) If the estimated cost of the extension exceeds one and one-half (1 ½) times the utility's estimate of annual revenue to be received from customers who will immediately attach to the extension, the applicant or applicant's authorized agent shall contract for such extension and shall deposit with the utility the estimated cost of the extension less one and one (1 ½) times such estimated annual revenue.*
- 4) Original prospective customers to be considered in (2) and (3) above shall be those who sign a contract for at least one year's water service and guarantee to the utility that they will take water service at their premises within thirty (30) days after the date water is turned into the main, and whose street service connections are directly connected to the mains installed under said extension. Estimates of annual revenues shall be made by the utility and shall be average revenue received from similarly situated customers. Where there are no similarly situated customers, the utility shall make an estimate of the annual bill.*
- 5) The utility shall make refunds during the first ten (10) years after the date upon which the deposit aforesaid was made and only to the depositor, his successors or assigns, as follows:*
 - A) Should the actual cost of the extension be less than the estimated cost, the utility shall refund the difference as soon as the actual cost has been ascertained. Should the actual cost of the extension exceed the estimated cost, the difference shall be used as an offset against any refunds that may become due pursuant to (B), (C) and (D) below*
 - B) Upon completion of the first yearly billing period of the original customers, for whom there were no similarly situated customers, as defined in subparagraph (4) above, the utility shall refund an amount equal to one and one-half (1 ½) times the difference between the annual revenue originally estimated by the utility and the actual revenue received, provided the actual revenue is greater than the estimated revenue. If the actual revenue is less than the estimated revenue, the difference shall be used to offset against revenues which would otherwise become the basis for refund pursuant to (C) below.*
 - C) During the first ten (10) years from the date of the aforesaid deposit the utility shall refund, for each additional new customer taking service from said extension under a regular yearly contract, at the end of the first year's billing for service to such additional new customer, an amount equal to one and one-half (1 ½) times the annual average water revenue from similarly situated customers. If*

there are no similarly situated customers, the utility shall refund one and one-half (1 ½) times the actual annual revenue received.

III. UNCONTESTED ISSUES

A. The wastewater system is Necessary, has Adequate Capacity and is the Least-cost means of providing service

The record establishes that the proposed construction of each of the wastewater systems is necessary to provide adequate, reliable, and efficient sewer service to the customers within the proposed certificated service areas. (Staff Ex. 1.0 at 4) The record establishes that the proposed wastewater systems will have sufficient capacity to meet the estimated demand from the customers within the proposed areas without the need to construct additional wastewater facilities. (Staff Ex. 1.0 at 5-6) The record establishes that the proposed construction of the wastewater systems constitutes the least-cost means of satisfying the sewer service needs of the customers within the proposed areas. (Staff Ex. 1.0 at 5)

B. Rules, Regulations and Conditions of Service - Sewer

RME and Staff support approval of the proposed Rules, Regulations, and Conditions of Service tariffs for sewer service. (Staff Ex. 6.0 at 9)

C. Wastewater Depreciation Rate and Average Service Life

RME proposes a composite depreciation rate of 4% and an average service life of 25 years. (RME Gp. Ex. A1, Ex. 1.0 FC, Lns. 304-305 and RME Gp. Ex. A1, Ex. 1.0 EG, Lns. 300-301) Staff witness William R. Johnson recommended the Commission find it reasonable for RME to apply a composite depreciation rate of 4% and a 25 year average service life for all wastewater utility plant. (Staff Ex. 5.0 at 5)

D. Rate of Return on Rate Base

Staff witness Rochelle Phipps recommended a rate of return on rate base for the Company of 10.83%. (Staff Ex. 3.0 at 11) RME concurs with Staff witness Phipps recommended rate of return. (RME Gp. Ex. A3 at 13)

IV. CONTESTED ISSUES

A. Establishment of Proper Investment Level

The Wastewater Service Agreements (RME Pet Ex. FC-C and Ex. EG-C) between the developers and RME are just and reasonable and should be approved. Staff objected to those agreements. (Staff Ex. 6.0 at 8) The refund provision contained in each Wastewater Service Agreement is required by 83 Illinois Administrative Code Part 600, in addition, without the refund provision the Wastewater Service Agreements would also be contrary to Section 8-101 and 9-101 of the PUA, 220 ILCS 5/8-101 and 5/9-101. (RME Gp. Ex. A2 at 9)

Section 8-101 of the PUA states in part: "...All rules and regulations made by a public utility affecting or pertaining to its charges or service to the public shall be just and reasonable." (220 ILCS 5/8-101) Section 9-101 of the PUA states:

All rates or other charges made, demanded or received by any product or commodity furnished or to be furnished or for any service rendered or to be rendered shall be just and reasonable. Every unjust or unreasonable charge made, demanded or received for such product or commodity or service is hereby declared prohibited and declared unlawful. All rules and regulations made by a public utility affecting or pertaining to its charges to the public shall be just and reasonable.

(220 ILCS 5/9-101) RME's position is that the Wastewater Service Agreements, which provide for a refund to those developers who install the wastewater collection systems to the proposed areas, are just and reasonable. (RME Pet. Ex. EG-C at 5-6; Ex. FC-C at 5-6)

RME witness Olson testified that RME supports the concept of having the developer advance funds for construction of the sewer facilities for the proposed area. (RME Gp. Ex. A3 at 5) However, RME recommends that the advanced funds be subject to appropriate refunds. (Id at 6) This procedure, whereby the developer initially advances the funds would, in RME's opinion, protect the utility company and the existing customers receiving wastewater service in case of slow or failed development. (Id at 6) The initial advancement of funds places the risk on the developer since it is the developer who will realize a profit as the lots within the service area are sold. (ICC Order 00-0194 at 5)

Staff witness Smith testified that because no Commission rules apply to sewer utilities, he is relying upon 83 Ill. Adm. Code 600.370 (Service to New Customers) of the Commission's regulations as investment policy. (Staff Ex. 1.0 at 14).

Section 600.370 and its application to sewer plant was extensively addressed in ICC Docket 00-0194 and confirmed by the Appellate Court. (IAWC v. ICC, 331 Ill. App. 3d 1030, 1037: 772 N.E. 2^d 390, 396 (2nd Dist 2002)) "[It] [h]ad no difficulty interpreting Section 600.370(a) as also pertaining to sewer supply plant [sic] to protect against the same unjust enrichment and to protect the same consumer interests as would result if refunds were not provided for water supply plant [sic]. To interpret Section 600.370(a) otherwise would permit [Citizens] or any other utility to amass sewer facilities entirely risk free, obviously frustrating at least part of the purpose for which the Section was enacted." (ICC Order 00-0194 at 5) The purpose of the Public Utilities Act (220 ILCS 5/1—101 et seq.) is to maintain control over the operation of utilities so as to prevent them from exacting unjust, unreasonable, and discriminatory rates. 220 ILCS 5/1-1-1 et seq.: Bloom Township High School v. Illinois Commerce Comm'n, 309 Ill. App. 3d 163, 175 (1999). In enacting the Public Utilities Act, the legislature intended, inter alia, to ensure:

(d) Equity: the fair treatment of customers and investors in order that

(i) the public health, safety and welfare shall be protected[.]

Accordingly, “[e]ach agreement for such an advance or revenue guarantee [for supply plants] must be submitted to the Commission for its approval.” (ICC Order 00-0194 at 6)

RME is asking the Commission for approval of the Agreements in this consolidated docket based on the reasoning developed in Docket 00-0194 confirmed by the appellate court. (IAWC v. ICC, 331 Ill. App. 3d 1030, 1037: 772 N.E. 2^d 390, 396 (2nd Dist 2002)) The agreement states that the developer will construct the wastewater system. (RME Pet. Ex. EG-C at 1-2, FC-C at 1-2) The Agreements provide for refunds by RME in accordance with the methodology developed and approved in Docket 01-0645. (Id at 5-6) In that case, the appropriate amount of the utility’s investment in a wastewater collection system was extensively addressed and it was ultimately agreed to use the methodology set forth on Attachment “A” to a Stipulation referenced in the Commission’s Order. (Order 01-0645 etc) (Pet. Attachment “A”) RME has utilized the approved methodology in Docket 01-0645 in developing the Wastewater Service Agreements. (RME Pet. Ex. EG-C at 1-2, FC-C at 5-6)

In both dockets 08-0490 and 08-0491, extensive sewer plants are required. Staff witness Smith testified that he recommends that RME be required to invest \$465,388 in the wastewater system for Falcon Crest and \$172,508 in the waste water system for Eastgate Estates. (Staff Ex. 1.0 at 16) The investment recommended by Staff equates to \$12,035 per lot on an average for the combined subdivisions. The investment per lot is extensive and required before customers can attach, therefore refunds are appropriate under Section 600.370(a) of the Public Utility Act.

The developers have agreed to advance the funds required for sewer plant construction subject to refund as customers are attached. (RME Pet. Ex. EG-C at 1-2, FC-C at 1-2, 5-6) The Wastewater Service Agreement for Eastgate Estates (EG-C) and

Falcon Crest (FC-C) are attached to their respective Petitions for Commission approval per Code 600.370. In accordance with Code 600.370 because of the limited initial customer base and the extensive backbone plant required to serve the area, receipt of a contribution with respect to those facilities is necessary to avoid undue risk for RME and its customers.

The Wastewater Service Agreement attached to each Petition provides for investment in the backbone plant as customers attach. (RME Gp. Ex. A3 at 6) Accordingly, the risk that the Area may not develop as planned is retained by the Developer, and not imposed upon RME or its customers. Under the Agreement, the developer will construct the Wastewater System. (Id at 6) The Agreement provides for refunds by RME in accordance with the methodology approved in Docket 01-0645. (Id at 6) The developer constructing the wastewater mains should receive a credit (refund) from the utility equivalent to one-and-one-half times the Company's estimate of the annual wastewater revenues to be provided by "Original Prospective Customers". (Id at 6) The amount refunded will not exceed the amount of the original deposit. (Id at 6) In this case the developer would receive a refund over a period of ten years at one and one half times the expected annual revenues from new customers attaching to the Wastewater Facilities over a ten year period. (Id at 6) Further, Section 8-406(d) provides, "in making its determination. The Commission shall attach primary weight to the cost or cost savings to the customers of the utility. The Commission may consider any or all factors which will or may affect such cost or cost savings." (Id at 6)

In accordance with Section 600.370 because of the limited initial customer base and the extensive backbone plant required to serve the area, receipt of a contribution with respect to those facilities is necessary to avoid undue risk for RME and its customers. (Id at 5-6)

Staff witness Smith testified because I am rejecting the Company's proposed sewer refund methodology, I have also rejected the Wastewater Sewer Agreements. (Staff Ex. 6.0 at 8)

Staff witness Smith further testified that the Order (00-0194) is clear that the purpose of a refund of developer contributions is to insure that a utility has adequate investment. (Id at 4) Staff witness Smith further testified, in this case, I have proposed, consistently with order in Docket No. 00-0194, and to make certain that the Company has an adequate amount of investment in the wastewater systems, that the entire investment in backbone plant is borne by the Company. (Id at 4) If the Company adheres to this recommendation, no contribution of backbone plant will exist, the Company will have adequate investment, and there will be nothing to refund to the developers. (Id at 4) Staff witness Smith stated, in essence I am proposing refunds. (Id at 5)

Staff does make a true point that if RME pays for the entire backbone plant, RME will have nothing to refund and they will have adequate investment. The fallacy with Staff's methodology is by requiring extensive investment in sewer plant before customers attach, without refund provisions, creates rates that are in violation of the "significant adverse financial consequences" language of Section 8-406(b)(3). The rates become so high that they are contradictory to the purpose of the Public Utility Act which is to maintain control over the operation of utilities so as to prevent them from exacting unjust, unreasonable, and discriminatory rates. (220 ILCS 5/1-101 et seq.)

As fully explained above, Staff's methodology for investment in this case should be rejected as the rates that are created by utilizing that methodology are in violation of the Public Utility Act.

The investment methodology proposed by RME is just and reasonable without any significant financial consequences for the utility or its customers. RME's investment methodology should be approved.

1. Determination of Appropriate Tariff Rates

The Single Tariff Rate proposed by RME is just and reasonable. The purpose of the Public Utilities Act (220 ILCS 5/1-101 et seq.) is to maintain control over the operation of the utilities so as to prevent them from exacting unjust, unreasonable, and discriminatory rates. (220 ILCS 5/1-101 et seq.) In enacting the Public Utilities Act, the legislature intended, inter alia, to ensure:

- “(d) Equity: the fair treatment of customers and investors in order that
 - (i) the public health, safety and welfare shall be protected;
 - (ii) the application of rates is based on public understanding and acceptance of the reasonableness of the rate structure;
 - (viii) the rates for utility services are affordable and therefore preserve the availability of such services to all citizens.” (220 ILCS 5/1 – 102(d)(i),(ii),(viii))

The Rates proposed by RME Illinois are \$53.00 for customers of Falcon Crest Subdivision and \$54.75 for the customers of Eastgate Estates. (RME Gp. Ex. A2 at 17) Combining the proposed revenue requirements in this consolidated rate case into a single tariff rate would result in each customer paying **\$53.30** per month. (RME Gp. Ex. A2 at 18)

Staff witness Philip Rukosuev stated he supports Single Tariff Pricing. (Staff Ex. 4.0 at 4) Staff witness Rukosuev further testified that the two service areas could be treated as one service area for ratemaking purposes by combining their respective revenue requirements and charging all customers in both service areas the same average rate. (Id at 4) Staff witness Rukosuev has proposed, based on Staff's recommended revenue requirement, that Falcon Crest Customers should each pay a customer charge of \$181.08 per month and Eastgate customers should pay a customer charge of \$297.34 per month. (Id at 8) Staff witness Rukosuev has taken the position that RME's proposal results in very high rates that are not

comparable to other sewer rates in Illinois, are not just and reasonable, and continue to be similar to the rates which the Commission rejected in Docket's Nos. 07-0331/07-0332 (Consol) (Id at 8).

The fact is RME's single tariff rate of \$53.30 is comparable with rates charged by other utilities. Aqua Illinois, Inc. at Hawthorne Woods in Lake County charges \$50.70 per month. (ICC Order 07-0331/07-0332 cons. at 9) Customers of Illinois-American Water Co. in the Chicago area pay \$45.52 per month. (Id at 9) Staff witness Rukosuev testified that the rates he calculated using Staff's revenue requirements are the rates the Company proposes. (Staff Ex 4.0 at 8) In contrast those rates are proposed by Staff and not RME. RME cannot support Staff's suggested rates of \$181.08 per month for Falcon Crest customers and \$297.34 per month for Eastgate Estates. (RME Gp. Ex. A2 at 17) RME reasonably believes that these proposed rates by Staff are in violation of 220 ILCS 5/1 – 101(d)(ii),(viii)

The Single Tariff Rate proposed by RME of \$53.30 per month is just and reasonable and has no significant financial consequences for RME or its customers. The Single Tariff Rate of **\$53.30** should be approved.

2. Financing the Wastewater Systems

RME's methodology of financing the cost for installation of the wastewater systems without significant adverse financial consequences for RME or the users of the system is in conformance with Section 8-406(b)(3) of the PUA and should be approved.

The purchase and installation of the system is structured in a way which minimizes initial capital investment required of RME and provides for investment to occur as new customers are attached to the system. The purchase structure is

described in the Wastewater Service Agreements. (Pet. Ex EG-C at 5-6 and FC-C at 5-6)

The investment proposed by RME occurs as new customers are attached to the system. The per customer amount to be repaid to the developer is \$934 for Falcon Crest and \$963 for Eastgate Estates and funded as each new customer is attached to the respective system. (Staff Ex. 1.0 at 14-15) The investment in the wastewater system is to be internally generated by RME. The predicted amount of internally generated funds in 2009 will be \$1926 based on 2 customers attaching to the wastewater system in Eastgate Estates. (RME Gp. Ex. A3 at 3)

Staff witness Phipps recommended that RME demonstrate it is capable of funding Staff's recommended level of investment, i.e., \$637,896, without significant adverse financial consequences for the utility or its customers, as required by Section 8-406(b)(3) of the Act. (Staff Ex. 3.0 at 2)

RME disagrees with the recommendation to fund Staff's suggested level of investment, i.e., \$637,896. (RME Gp. Ex. A2 at 13) Staff witness Phipps is recommending RME fund a level of investment that will create customer rates that are so high that they violate the provisions of Section 8-406(b)(3) of the Act. (Id at 13) This same level of investment which created the high customer rates was previously rejected by the Commission in Docket 07-0331/07-0332 consolidated. (Id at 13) RME can find no just basis of funding a level of investment that creates extraordinarily high customer rates that the Commission must ultimately reject. (Id at 13)

RME's methodology of financing the wastewater systems without significant adverse financial consequences for the utility or its customer is in conformance with Section 8-406(b)(3) of the Public Utilities Act and should be approved.

3. Letter of Credit vs. Line of Credit

The developer in each docket will provide as additional security an irrevocable and unconditional letter of credit in the amount of 100 percent of the cost of the system. The letter of credit shall remain in effect for five years to secure maintenance and repair to the system. The Letter of Credit is included as part of the developers cost of securing approval of the proposed development and provides security for RME, its customers and the respective municipalities for operation of the system. Additional security is not required by Section 8-406(b)(3) of the Act.

The Village of Long Grove approved the plans for Eastgate Estates (Docket 08-0491) by Ordinance filed October 11, 2007 and recorded as Document Number 6267259 in the Recorder's Office in Lake County, Illinois. (RME Gp. Ex. A3 Ex. C) The Village of Long Grove anticipated the parcels would be served by a public utility company and required that upon completion and approval of the wastewater system by the Lake County Health Department (the regulating authority with regard to onsite wastewater systems), the developer shall deliver to Long Grove security in an amount to 100 percent of the cost of the system to secure maintenance and repair of the wastewater system (Id at 4-5) Further, the security shall remain in place for a period of five years following the approval of the construction of the system. (Id at 5) RME has provided Staff with a copy of the Irrevocable Letter of Credit for Eastgate Estates (Docket 08-0491) in the amount of \$257,000. (Staff Ex. 8.0 at 5) Falcon Crest (Docket 08-0490) is not being constructed at this time therefore no irrevocable Letter of Credit has as yet been posted.

Staff witness Phipps recommended RME provide a line of credit for \$35,000 which equals approximately one year of operating expenses (excluding depreciation and amortization) for the wastewater systems that would serve the

Lake County areas. (Staff Ex. 3.0 at 6-7) Staff witness Phipps further stated a line of credit from a bank allows a company to borrow at any time up to an established limit (Id at 7) subject, however, to the right of the bank to cancel or recall the line of Credit at any time (the line of credit is a due on demand loan). In contrast, a Letter of credit is a guarantee of payment by a bank in favor of a designated beneficiary class which is irrevocable and unconditional for a fixed period of time and given as security for proper system operation and maintenance. Staff witness Phipps failed to point out a line of credit can be revoked by a bank at any time, in contrast, a Letter of Credit which is irrevocable. The cost of the Line of Credit would be borne by the customers. The Letter of Credit cost is borne by the developer.

The developer is providing security in the form of a five year irrevocable Letter Of Credit, for maintenance and repair of the wastewater systems. (RME Gp. Ex. A3 at 4) This security will protect the utility and its customers from adverse financial consequences. (Section 8-406(b)(3))

4. Accounting for Transactions

RME's accounting for transactions should be approved as these are appropriate for the refund methodology proposed.

The Petitioner proposes that in accordance with Commission policy and the Uniform System of Accounts (83 Ill. Admin. Code, Part 605, Accounting Instruction 17), to record the original cost of wastewater facilities for the Area in the applicable Utility Plant In Service (Account 101). (RME Gp. Ex. A2 at 15) The original cost of the Wastewater System for the Area will be the installed gross cost of the facilities. (Id at 15) RME proposes to record the anticipated amount for refunds in Account 252. (Id at 15) The difference between the construction cost and the Advances for Construction would be recorded in Account 271- Contributions in Aid of

Construction. (Id at 15-16) The balance in Account 252 would be offset by a debit for refunds made in accordance with the methodology approved in Docket 01-0645. (Id at 16) The wastewater accounting entries proposed by RME are set forth in Exhibit FC-D and Exhibit EG-D to the Original Petition.

The above accounting entries would have no initial effect on rate base (the amount recorded as utility plant being offset entirely by contributions and advances). (RME Gp. Ex. A2 at 16) Rate base would increase as customers attach due to RME's payment of sewer construction refunds (which reduces the amount of advances) under the refund methodology. (Id at 16)

Staff witness Theresa Ebrey stated that the purpose of her testimony was to present her position regarding: (1) Revenue Requirements; (2) accounting journal entries; and (3) financial information reporting requirements. (Staff Ex 2.0 at 1-2). RME disagrees with Staff's proposed revenue requirements and accounting journal entries in that these are based on Staff witness Smith's recommended level of investment, i.e. \$638,896, which RME has vigorously opposed under Contested Issues Section A – Establishment of Proper Investment Level. Staff witness Ebrey further stated that the entries proposed by RME to Account 252, Customer Advances represent RME's anticipated investment in wastewater plant for the two systems based on the refunds provided to the developers as customers attach to the systems. (Id at 9) However, Staff witness Ebrey stated, Staff witness Smith opposed the refund mechanism proposed by RME. (Id at 9)

Staff witness Ebrey's recommended financial reporting (Id at 9-10) is not opposed by RME (RME Gp. Ex. A3 at 3)

Staff witness Ebrey stated the appropriate plant investment level determines the accounting treatment. (Staff Ex. 7.0 at 3 Staff witness Ebrey further states the Commission should decide which proposed plant investment level is

appropriate and the accounting method will follow. (Staff Ex. 7.0 at 3) Therefore, the appropriate journal entries to record the original cost of plant must be a factor of the methodology under which the amount of plant investment is determined. (Staff Ex. 7.0 at 3)

The accounting for transactions proposed by RME should be approved as they are appropriate for the refund methodology presented by RME.

B. Capability of Managing the System

RME has demonstrated that it is capable of efficiently managing and supervising the construction process and has taken sufficient action to ensure adequate and efficient construction and supervision thereof. Staff witness Smith's contention that the RME has violated Section 8-406 (b)(2) of the PUA is without basis and is unfounded. (RME Gp. Ex. A2 at 11)

RME will be considered a public utility company after compliance with Section 8-406(a) and Section 3-105 of the PUA. The Public Utilities Act Section 8-406(a) states as follows:

No public utility now owning any city or village franchise nor engaged in performing any public service or in furnishing any product or commodity within this State as of July 1, 1921 and not possessing a certificate of convenience and necessity from the Illinois Commerce Commission, the State Public Utilities Commission or the Public Utilities Commission, at the time this amendatory Act of 1985 goes into effect, shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.

And Section 3-105 of the Public Utilities Act states as follows:

"Public Utility" means and includes except where otherwise expressly provided in this Section, every corporation, company, limited liability company, association, joint stock company or association firm, partnership or individual, their lessees, trustees, or receivers appointed by any court whatsoever that owns, controls, operates or manages, within this State, directly or indirectly, for public use, any plant, equipment or property used or to be used for or in connection with, or owns or used or to be used for in connection with, or owns or controls any franchise, license, permit or right to engage in:

- a. the production, storage, transmission, sale, delivery or furnishing of heat, cold, power, electricity, water, or light, except when used solely for communication purposes;
- b. the disposal of sewage; or

c. the conveyance of oil or gas by pipe line.

RME is not, at this time, a Public Utility as defined in both Section 8-406(a) and Section 3-105 of the Public Utility Act.

Staff witness Smith testified that the developer had begun construction of the wastewater system in Eastgate Estates (Staff Ex 1.0 at 7) Thus, RME had been a participant in the certification process with the Commission prior to the commencement of construction. (Id at 7) It was not reasonable for RME to enter into a working relationship with any developer that had begun construction of a wastewater system prior to ensuring that proper regulatory approvals had been obtained. (Id at 7) It was managerially imprudent for RME to agree to own and operate the wastewater system as a public utility without first obtaining approval from the ICC. (Id at 7-8)

RME is not a public utility company and therefore has no control of the actions of the developer who is operating under a permit, secured by the developer, from the Lake County Health Department. (RME Gp. Ex. A2 at 11-12) Until such time as RME is a public utility company RME could not oversee the construction as a public utility company and did not so act. After RME is granted a Certificate of Necessity and Convenience, thereby becoming a public utility company, a complete and thorough inspection will be performed in conjunction with the construction of the wastewater system at Eastgate Estates. (RME Pet Ex. FC-C at 3-4; Ex. EG-C at 3-4) Hence, there is no basis for a determination that RME violated the Public Utility Act.

IV. CONCLUSION

RME has demonstrated that the construction of the wastewater treatment system is necessary and the least-cost means of satisfying the service needs of its customers and that RME has the managerial, technical and financial capability to own and operate a wastewater treatment system in the service areas. RME will promote the public

convenience and has fully satisfied the requirements of Section 8-406 of the Public Utilities Act. In its Brief, RME has satisfactorily addressed each concern of Staff. Based upon the compelling evidentiary record it is proper for the Illinois Commerce Commission to Grant RME's Petition for Certificates of Public Convenience and Necessity.

WHEREFORE, RME Illinois, LLC respectfully requests that the Commission enter the following findings: (1) The approval of RME's petition, including granting a Certificate of Public Necessity and Convenience authorizing RME Illinois, LLC to own, operate, construct and maintain facilities necessary and appropriate to the proposed service area and to transact the business of furnishing wastewater service to the public; (2) approve RME's Rules and Regulations and Terms and Conditions; (3) approve RME's accounting entries; (4) approve the Wastewater Service Agreements; and (5) grant any and all other appropriate relief.

Dated: April 23, 2009

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Respectively submitted,



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